

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSE LUIS AREVALO	:	MISCELLANEOUS ACTION
	:	
vs.	:	
	:	
UNITED STATES OF AMERICA	:	NO. 05-110

MEMORANDUM

ROBERT F. KELLY, Sr. J.

JANUARY 19, 2006

Jose Luis Arevalo (Arevalo) has filed a “Motion for Return of Seized Property Pursuant to Fed. R.Crim. P. 41(g)”.

The motion alleges in part, if the property has been forfeited, the forfeiture is void because Arevalo was not provided with proper notice.

The government has filed a response contending that the motion is time barred. Because I agree with the government’s position, Arevalo’s motion will be denied.

I. FACTS

On July 13, 1999, U.S. Customs Service Agents in Philadelphia, Pennsylvania, seized from George Early \$459,370 in United States currency together with other personal property. The agents seized this property in connection with an investigation of a large scale marijuana distribution and money laundering operation involving John Dugery. The United States Customs Service published notice of its seizure of this property. See copy of advertising voucher, dated May 24, 2000, attached as “Exhibit A” to government’s response. Specifically, on May 10, May 17 and May 24, 2000, the government published notice of the seizure in the Philadelphia

Daily News.¹ No claims for return of the seized currency were filed with the U.S. Customs Service within the time required by law. Therefore, on May 31, 2001, the U.S. Customs Service administratively forfeited the seized currency. See copy of Declaration of Administrative Forfeiture attached as “Exhibit B” to the government’s response.

Arevalo, the movant in this case, is an inmate at the Federal Correctional Institution in Phoenix, Arizona. Arevalo and Dugery were prosecuted in the Middle District of Florida for conspiracy to distribute marijuana.² On May 4, 1999, a grand jury in the Middle District of Florida returned an indictment against Arevalo and others charging them with conspiracy to distribute marijuana, in violation of 18 U.S.C. § 846, and money laundering, in violation of 18 U.S.C. § 1956. United States v. Jose Louis Arevalo, No. 99-CR-158-EAK-1 (M.D. Fla.). On February 15, 2000, a jury convicted Arevalo of conspiracy to distribute and to possess with intent to distribute 1,000 kilograms or more of marijuana and conspiracy to commit money laundering. On January 12, 2001, the Court there sentenced Arevalo to a term of 360 months imprisonment and 72 months supervised release. The conviction and sentence were affirmed by the Eleventh Circuit Court of Appeals.

On June 6, 2005, Arevalo filed the present motion. According to the Certificate of Service, Arevalo served the motion on the government on May 30, 2005. Arevalo claims an

¹Also, on May 8, 2000, the United States Customs Service sent written notice of the proposed forfeiture directly to George Early, and his counsel, even though Early abandoned his interest in the property at the time of the seizure. The U.S. Customs Service also sent notice directly to John Dugery.

²Dugery pleaded guilty to Counts One and Two of an Information charging him with conspiracy to distribute marijuana, in violation of 21 U.S.C. §§ 846 and 841(a)(1), and conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). United States v. Dugery, No. 99-CR-284-EAK (M.D. Fla.).

interest in the seized currency, and contends that the U.S. Customs Service was aware of his interest at the time of the seizure. Motion, ¶ 2. He contends that the forfeiture of the currency is void because the government did not provide him with notice of the forfeiture. Id.

The government contends that Rule 41(g) does not apply to this proceeding.³ The basis for its contention is the passage on April 25, 2000 of the Civil Asset Forfeiture Reform Act of 2000 (“CAFRA”). Pub. L. 106-185, 114 Stat. 202 (2000). Section 983(e) of CAFRA codified the practice of federal courts exercising equitable jurisdiction to review the merits of a forfeiture matter setting forth an exclusive remedy for challenging a closed administrative forfeiture on the grounds that the claimant did not receive proper notice. 18 U.S.C. § 983(e).

CAFRA applies to “any forfeiture proceeding commenced on or after” August 23, 2000, 120 days after CAFRA was signed into law.⁴

In an article that thoroughly analyzes CAFRA, its legislative history and the prior confused state of the law, at least one commentator concluded that § 983(e) was meant to apply to forfeitures that were closed prior to the enactment of CAFRA:

On the other hand, the legislative history indicates that § 983(e) was enacted to resolve uncertainty in the law and to provide a clear mechanism for resolving challenges to completed administrative forfeitures. [FN 130] It would make little sense for Congress to have

³Effective December 1, 2002, the former Rule 41(e) has been renumbered 41(g), with only stylistic changes. See Rule 41, Adv. Comm. Notes, 2002 Amendments. Although the present motion is brought under Rule 41(g), many of the cases cited herein were brought under the predecessor Rule 41(e), and, for purposes of the present motion, the two Rules are used interchangeably.

⁴The effective and applicability provision of § 983 states that “Amendments by Public Law 106-185 are applicable to any forfeiture proceedings commenced on or after the date that is 120 days after April 25, 2000 [August 23, 2000].” See also United States v. \$100,348, 354 F.3d 1110, 1116 (9th Cir. 2004) (August 23, 2000 was the effective date of CAFRA).

enacted a provision intended to clarify the law, and to provide a procedure where none previously existed, only to have it not apply for more than a decade while prisoners continued to challenge old cases under the old law. Hence, it seems likely that § 983(e) will be held to apply to any case where the motion to set aside the forfeiture declaration is filed after August 23, 2000, regardless of the age or date of the underlying forfeiture.⁵ [FN131]

At least two courts have applied § 983(e) to forfeitures that had been completed prior to August 23, 2000 in situations identical to the one at hand. See Barton v. United States of America, 2005 W.L. 1463476 (E.D. MO); Rohlsen v. DEA Atlanta Airport Taskforce, 2005 W.L. 878573 (N.D. GA).

Based on the foregoing I conclude that § 983(e) applies to forfeitures that were completed prior to August 23, 2000. Therefore, under § 983(e)(B)(3) this application had to have been filed within five years after the date of final publication of the forfeiture notice which was May 24, 2000. The record shows that the present motion was not filed until June 6, 2005 therefore it is barred by the statute of limitations.

I therefore enter the following Order.

⁵See Stefan D. Cassella, The Civil Asset Forfeiture Reform Act of 2000: Expanded Government Forfeiture Authority and Strict Deadlines Imposed on All Parties, 27 J. Legis. 97, 118 (2001).

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ORDER

AND NOW, this 19th day of January, 2006, Jose Luis Arevalo's Motion for return of seized property is **DENIED** for the foregoing reasons. This action is hereby **DISMISSED**.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY
SENIOR JUDGE